

Bill No. 52-14
Concerning: Pesticides – Notice
Requirements – Cosmetic Pesticide
Use Restrictions
Revised: October 6, 2015
Draft No. 11
Introduced: October 28, 2014
Enacted: October 6, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Lead Sponsors Council Vice President Leventhal and Councilmembers Elrich, Hucker, Riemer,
and Navarro
Co-sponsor: Councilmember Floreen

AN ACT to:

- (1) require posting of notice for certain applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on playgrounds, children's facilities, and certain County-owned property;
- (4) require the County to adopt an integrated pest management program for certain County-owned property;
- (5) require the Parks Department to take certain steps to reduce the use of certain pesticides;
and
- (6) generally amend County law regarding pesticides.

By amending

Montgomery County Code
Chapter 33B, Pesticides
Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6, and 33B-7

By adding

Montgomery County Code
Chapter 33B, Pesticides
Articles 2, 3, and 4
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, 33B-13, and 33B-14

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6 and 33B-7 are**
2 **amended, and Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, 33B-13, and 33B-**
3 **14 are added as follows:**

4 **ARTICLE 1. General Provisions**

5 **33B-1. Legislative findings and purpose.**

6 (a) The County Council finds that:

7 (1) pesticides have value when they are used to protect the public
8 health, the environment, and our food and water supply;

9 (2) pesticides, by definition, contain toxic substances, many of which
10 may have a detrimental effect on human health and the
11 environment and, in particular, may have developmental effects on
12 children;

13 (3) exposure to certain pesticides has been linked to a host of serious
14 conditions in children including pediatric cancers, decreased
15 cognitive function, and behavioral problems such as ADHD, and
16 the following conditions in adults: Parkinson's disease, diabetes,
17 leukemia, lymphoma, lupus, rheumatoid arthritis, dementia,
18 reproductive dysfunction, Alzheimer's disease, and a variety of
19 cancers including breast, colon, prostate and lung cancer;

20 (4) clean water is essential to human life, wildlife and the
21 environment, and the unnecessary use of pesticides and herbicides
22 for cosmetic purposes contributes to the deterioration of water
23 quality, as substantiated by several studies including the 2014
24 USGS study which found that 90% of urban waterways have
25 pesticide levels high enough to harm aquatic life;

26 (5) bees and other pollinators are crucial to our ecosystem, and the use
27 of neonicotinoid insecticides, which have been repeatedly and

28 strongly linked with the collapse of honey bee colonies, as well as
29 harm to aquatic insects and birds, pose an unacceptable risk to
30 beneficial organisms;

31 (6) there are non- and less-toxic alternatives and methods of
32 cultivating a healthy, green lawn that do not pose a threat to public
33 health, and that use of pesticides for cosmetic purposes is not
34 necessary for the management of lawns, especially in light of the
35 risks associated with their use;

36 (7) pesticide regulations at the federal and State level, and the risk
37 assessments that inform them, do not mimic real world exposure
38 scenarios and fail to account for synergistic or cumulative effects
39 of multiple chemicals acting on the same pathway; do not include
40 sufficient evaluation of a pesticide's "inert" ingredients and the
41 pesticide formulations that are sold to consumers; and often fail to
42 take sensitive populations like children and pollinators into
43 account;

44 (8) in the absence of adequate regulation at the federal or State level,
45 the County is compelled to act to protect the health of children,
46 families, pets and the environment.

47 (b) The purpose of this Chapter is to protect the public health and welfare
48 and to minimize the potential pesticide hazard to people and the
49 environment, consistent with the public interest in the benefits derived
50 from the safe use and application of pesticides. The goal is to inform the
51 public about pesticide applications and minimize the use of pesticides for
52 cosmetic purposes, while not restricting the ability to use pesticides in
53 agriculture, for the protection of public health, or for other public benefit.
54

33B-2. Definitions.

In this Chapter:

Agriculture means the business, science, and art of cultivating and managing the soil, composting, growing, harvesting, and selling sod, crops and livestock, and the products of forestry, horticulture and hydroponics; breeding, raising, or managing livestock, including horses, poultry, fish, game and fur-bearing animals; dairying, beekeeping and similar activities, and equestrian events and activities.

Children's facility means a building or part of a building which, as part of its function, is regularly occupied by children under the age of 6 years and is required to obtain a certificate of occupancy as a condition of performing that function. Children's facility includes a child day care center, family day care home, nursery school, and kindergarten classroom.

Custom applicator means a person engaged in the business of applying pesticides.

Department means the Department of Environmental Protection.

Director means Director of the Department of Environmental Protection or the Director's designee.

Garden means an area of land used to cultivate food crops, flowers, or other ornamental plants.

Lawn means an area of land, except agricultural land, that is:

- (1) mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and
- (2) kept trim by mowing or cutting.

Lawn does not include a:

- (1) playing field;
- (2) golf course;

(3) garden; or

(4) tree or shrub..

Listed pesticide means:

(1) a pesticide the active ingredients of which are recommended by the National Organic Standards Board (NOSB) pursuant to 7 U.S.C. § 6518, as amended, and published as the National List at 7 C.F.R. §§ 205.601 and 205.602; or

(2) a pesticide designated a “minimum risk pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) § 25(b) and listed in 40 C.F.R. § 152.25(f).

Mulched recreation area means an area of land covered with natural or synthetic mulch or wood chips that is not a playground, but is open to the public for picnic or other recreation use.

Neonicotinoid means a class of neuro-active pesticides chemically related to nicotine. Neonicotinoid includes acetamiprid, clothianidin, dinotefuran, imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

Pest means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a pest or defined as a pest by applicable state regulations.

Pesticide means a substance or mixture of substances intended or used to:

- (1) prevent, destroy, repel, or mitigate any pest;
- (2) be used as a plant regulator, defoliant, or desiccant; or
- (3) be used as a spray adjuvant, such as a wetting agent or adhesive.

However, *pesticide* does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a pesticide under any federal or state law or regulation.

Playground means an outdoor children's play area that is on the premises of a children's facility, school, apartment building or complex, common ownership community, or park. Playground includes a mulched path that is used to enter a children's play area.

Playing field means:

- (1) an athletic field maintained by the Montgomery County Department of Parks; or
- (2) an area of land on private property maintained exclusively for sporting use.

Private lawn application means the application of a pesticide to a lawn on property owned by or leased to the person applying the pesticide. Private lawn application does not include:

- (1) applying a pesticide for the purpose of engaging in agriculture; or
- (2) applying a pesticide around or near the foundation of a building for the purpose of indoor pest control.

Registered pesticide means a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to FIFRA for use in lawn, garden and ornamental sites or areas.

Vector or disease vector means an animal, insect, or microorganism that carries and transmits an infectious pathogen into another organism.

Waterbody means waters located within the County that are:

- (1) subject to the ebb and flow of the tide; or
- (2) free flowing, unconfined, and above-ground rivers, streams or creeks.

33B-3. Signs with retail purchase of pesticide.

A person who sells at retail a pesticide or material that contains a pesticide must:

(a) make available to a person who buys the pesticide or material that contains a pesticide:

(1) notice signs and supporting information that are approved by the Department;

(2) the product label or other information that FIFRA requires for sale of the pesticide; and

(3) materials approved or distributed by the Department that:

(A) explain the dangers of contamination that may occur from pesticide use; and

(B) inform buyers of the availability of alternative products; and

(b) display a sign or signs in each area of the retail establishment where registered pesticides are available to consumers, with language approved by the Department, that:

(1) informs buyers of the County law on the use of registered pesticides on lawns; and

(2) identifies pest control options that are permissible for lawn application under the law.

The Department must enforce this Section and must annually inspect each person who sells at retail a pesticide or material that contains a pesticide.

33B-4. Storage and handling of pesticides.

Any person who sells at retail a pesticide or material that contains a pesticide must:

(a) transport, display, and store each pesticide in a secure, properly labeled container that resists breakage and leakage, and promptly clean up and either repackage or properly dispose of any pesticide that escapes from its container;

(b) display and store each pesticide separately from any food, medicine, or other product that a human being or animal may ingest; and

- (c) transport each pesticide separately from any food, medicine, or other product that a human being or animal may ingest unless the pesticide is in a secure container that resists breakage and leakage.

The Department, the Health and Human Services Department, and any other agency designated by the County Executive, must enforce this Section.

33B-5. Regulations.

- (a) The Executive must adopt regulations to carry out this Chapter under method (2).
- (b) The Executive must include in the regulations adopted under this Section the minimum size or quantity, and type of pesticide subject to Section 33B-3.
- (c) The Executive must include in the regulations adopted under this Section a list of invasive species that may be detrimental to the environment in the County.
- (d) The Executive must review and update the list of invasive species designated under subsection (c) by July 1 of each year.

33B-6. Penalty for violating chapter.

- (a) Any violation of this Chapter is a class C violation.
- (b) Each day a violation continues is a separate offense.

ARTICLE 2. Notice Requirements.

33B-7. Notice about pesticides to customer.

- (a) In this Section:
- (1) Customer means a person who makes a contract with a custom applicator to have the custom applicator apply a pesticide to a lawn.
- (2) New customer includes a customer who renews a contract with a custom applicator.

- 189 (b) A custom applicator must give to a new customer:
- 190 (1) before application, a list of:
- 191 (A) the trade name of each pesticide that might be used;
- 192 (B) the generic name of each pesticide that might be used; and
- 193 (C) specific customer safety precautions for each pesticide that
- 194 might be used; and
- 195 (2) after application, a list of:
- 196 (A) the trade name of each pesticide actually used; and
- 197 (B) the generic name of each pesticide actually used; and
- 198 (3) a written notice about pesticides prepared by the Department under
- 199 subsection (c).
- 200 (c) The Department must prepare, keep current, and provide to a custom
- 201 applicator a written notice about pesticides for the custom applicator to
- 202 give to a customer under subsection (b).
- 203 (d) The notice prepared by the Department under subsection (c) must
- 204 include:
- 205 (1) government agency phone numbers to call to:
- 206 (A) make a consumer complaint;
- 207 (B) receive technical information on pesticides; and
- 208 (C) get assistance in the case of a medical emergency;
- 209 (2) a list of general safety precautions a customer should take when a
- 210 lawn is treated with a pesticide;
- 211 (3) a statement that a custom applicator must:
- 212 (A) be licensed by the Maryland Department of Agriculture; and
- 213 (B) follow safety precautions; and

- (4) a statement that the customer has the right to require the custom applicator to notify the customer before each treatment of the lawn of the customer with a pesticide.

33B-8. Posting signs after application by custom applicator.

- (a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must place markers within or along the perimeter of the area where pesticides have been applied.
- (b) A marker required under this Section must:
- (1) be clearly visible to persons immediately outside the perimeter of the property;
 - (2) be a size, form, and color approved by the Department;
 - (3) be made of material approved by the Department;
 - (4) have wording with content and dimensions approved by the Department; and
 - (5) be in place on the day that the pesticide is applied.

33B-9. Posting signs after application by property owner or tenant.

- (a) A person who performs a private lawn application treating an area more than 100 square feet, or an area of any size within five feet of a property line, must place markers within or along the perimeter of the area where pesticides have been applied.
- (b) A marker required under this Section must:
- (1) be clearly visible to persons immediately outside the perimeter of the property;
 - (2) be a size, form, and color approved by the Department;
 - (3) be made of material approved by the Department; and
 - (4) have wording with content and dimensions approved by the Department; and

(5) be in place on the day that the pesticide is applied.

ARTICLE 3. Application restrictions.

33B-10. Prohibited applications.

(a) On County-owned property and private property, except as provided in subsection (b), a person must not apply a registered pesticide other than a listed pesticide to:

(1) a lawn;

(2) a playground;

(3) a mulched recreation area;

(4) a children's facility; or

(5) the grounds of a children's facility.

(b) A person may apply any registered pesticide to:

(1) control weeds as defined in Chapter 58, Weeds;

(2) control invasive species listed in a regulation adopted under subsection 33B-5(c);

(3) control disease vectors;

(4) control biting or stinging insects or stinging plants;

(5) control organisms that threaten the health of trees or shrubs;

(6) maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation;

(7) control indoor pests, if applied around or near the foundation of a building;

(8) control pests while engaged in agriculture; and

(9) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used.

(c) If a pesticide is applied under paragraph (b)(9) of this Section, the person applying the pesticide must:

(1) within seven days after a pesticide is applied on private property, notify the Department of the application and the reasons for the use of the pesticide; or

(2) within 30 days after a pesticide is applied on County-owned property, inform the Council of the application and the reasons for the use of the pesticide.

33B-11. Outreach and education campaign.

(a) The Executive must implement a public outreach and education campaign before and during implementation of the provisions of this Article.

(b) The outreach and education campaign must include the provision of the following resources:

(1) the National Organic Standards Board National List or the Organic Materials Review Institute (OMRI) listed products which are the NOSB National list products categorized by use;

(2) FIFRA § 25(b) minimum risk pesticides, listed in 40 C.F.R. § 152.25(f); and

(3) guidance on best practices for organic and pesticide-free lawn care.

(c) The outreach and education campaign should include:

(1) informational mailers to County households;

(2) distribution of information through County internet and web-based resources;

(3) radio and television public service announcements;

(4) news releases and news events;

- (5) information translated into Spanish, French, Chinese, Korean, Vietnamese, and other languages, as needed;
- (6) extensive use of County Cable Montgomery and other Public, Educational, and Government channels funded by the County; and
- (7) posters and brochures made available at County events, on Ride-On buses and through Regional Service Centers, libraries, recreation facilities, senior centers, public schools, Montgomery College, health care providers, hospitals, clinics, and other venues.

ARTICLE 4. County Property and Parks

33B-12. Neonicotinoid pesticides on County-owned property.

- (a) Prohibition. Except as provided in subsection (b), a County employee or County contractor must not use a neonicotinoid pesticide on property owned by the County.
- (b) Exceptions.
- (1) A County employee or County contractor may use a neonicotinoid pesticide on County-owned property to control pests while engaged in agriculture.
- (2) This Section does not apply to County-owned property that the Parks Department operates or manages for the County.

33B-13. Integrated pest management on County property.

- (a) Adoption of program. The Department must adopt an integrated pest management program for all property owned by the County.
- (b) Requirements. Any program adopted under subsection (a) must require:
- (1) monitoring the turf or landscape as appropriate;
- (2) accurate record-keeping documenting any potential pest problem;
- (3) evaluating the site for any injury caused by a pest and determining the appropriate treatment;

- (4) using a treatment that is the least damaging to the general environment and best preserves the natural ecosystem;
- (5) using a treatment that will be the most likely to produce long-term reductions in pest control requirements and is operationally feasible and cost effective in the short and long term;
- (6) using a treatment that minimizes negative impacts to non-target organisms;
- (7) using a treatment that is the least disruptive of natural controls;
- (8) using a treatment that is the least hazardous to human health; and
- (9) exhausting the list of all non-chemical methods and listed pesticides for the targeted pest before using any other treatments.

(c) The Department must provide training in integrated pest management for each employee who is responsible for pest management.

33B-14. County parks.

(a) *Policy.* It is the policy of Montgomery County to promote environmentally sensitive landscape pest management in its parks by phasing out the use of the most hazardous pesticides and reducing overall pesticide use while preserving landscape assets, maintaining functionality of playing fields, and protecting the health and safety of the public and County employees. To carry out this policy, the Parks Department must, subject to appropriation, implement the provisions of this Section.

(b) *Pesticide-free parks.* The Parks Department must implement a pesticide-free parks program that, at a minimum, consists of:

- (1) the maintenance of certain parks entirely without the use of registered pesticides other than listed pesticides;
- (2) a program for reducing the use of registered pesticides other than listed pesticides on playing fields that includes:

- 348 (A) a pilot program consisting of at least five playing fields
 349 maintained without the use of registered pesticides other
 350 than listed pesticides that:
- 351 (i) is conducted in consultation with an expert in organic
 352 turf management, with experience in successful
 353 transitions from conventional to organic turf
 354 management; and
- 355 (ii) includes a publicly available plan describing the
 356 practices and procedures used;
- 357 (B) maintenance of all other playing fields using an integrated
 358 pest management program; and
- 359 (C) a plan submitted to the Council by September 2019 for
 360 transitioning to maintenance of all playing fields without the
 361 use of registered pesticides other than listed pesticides by
 362 2020; and
- 363 (3) a public communication campaign to inform the public of the
 364 existence and progress of the pesticide-free parks program.
- 365 (c) *Pesticide usage protocols.* The Parks Department must develop usage
 366 protocols which limit the use of registered pesticides other than listed
 367 pesticides to the maximum extent possible and, subject to the exceptions
 368 in subsection (d):
- 369 (1) do not permit the use of registered pesticides other than listed
 370 pesticides within 25 feet of a waterbody;
- 371 (2) except where immediate application is necessary to protect human
 372 health or prevent significant economic damage, include the posting
 373 of notice of each planned application of a registered pesticide other
 374 than a listed pesticide on the appropriate Parks Department website

and in the area where the pesticide is to be applied, from at least 48 hours before application through at least 48 hours after application, that includes:

(A) the common name of the pesticide;

(B) the location of the application;

(C) the planned date and time of the application; and

(D) the reason for the use of the pesticide; and

(3) provide for pesticide application information required under paragraph (c)(2) to be made available to the public in real-time and in a manner consistent with the Montgomery County Open Data Act, Chapter 2, Article XIV of this Code.

(d) *Exceptions.* The pesticide-free parks program and pesticide usage protocols may generally permit the application of a registered pesticide to:

(1) control weeds as defined in Chapter 58, Weeds;

(2) control invasive species listed in a regulation adopted under subsection 33B-5(c);

(3) control disease vectors;

(4) control biting or stinging insects or stinging plants;

(5) control organisms that threaten the health of trees or shrubs;

(6) remove weeds as part of the renovation of a playing field;

(7) control pests while engaged in agriculture; and

(8) otherwise protect human health or prevent significant economic damage.

(e) *Reporting requirement.* The Parks Department must submit semi-annual reports to the County Executive and County Council on or before January 15 and July 15 of each year that:

- (1) detail registered pesticide usage, other than listed pesticide usage, in County parks during the preceding year, including:
- (A) the common name of each registered pesticide used;
- (B) the location of each application;
- (C) the date and time of each application; and
- (D) the reason for each use of a registered pesticide;
- (2) describe the status of the pesticide-free parks program implemented under this Section; and
- (3) are available to the public in a manner consistent with the Montgomery County Open Data Act, Chapter 2, Article XIV of this Code.

Sec. 2. Initial List of Invasive Species. The Executive must submit the list of invasive species required by Subsection 33B-5(c) to the Council for approval by March 1, 2016

Sec. 3. Effective Date. The prohibitions and requirements related to the use of registered pesticides and neonicotinoids on County-owned property and in County parks contained in Sections 33B-10, 33B-12, 33B-13 and 33B-14 take effect on July 1, 2016; the prohibitions on the use of registered pesticides on private property contained in Section 33B-10 take effect on January 1, 2018.

Approved:

George Leventhal, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

425 *This is a correct copy of Council action.*

426

Linda M. Lauer, Clerk of the Council

Date